

Belvedere:
Jerry Butler

July 22, 2004

Corte Madera:
Melissa Gill

TO: Transportation Authority of Marin Commissioners

Fairfax:
Lew Tremaine

RE: Addendum to Nelson/Nygaard Contract to Extend Public Outreach and Education Services Related to the Transportation Sales Tax Expenditure Plan and Ballot Measure – Agenda Item 11

Larkspur:
Joan Lundstrom

Dear Commissioners:

Mill Valley:
Dick Swanson

On February 26, 2004, the Marin Congestion Management Agency approved a Professional Services Agreement with Nelson/Nygaard Consulting Associates to provide Transportation Planning services related to the preparation of the Transportation Sales Tax Expenditure Plan and ballot measure (see attached contract). This contract is set to expire on July 31, 2004.

Novato:
Pat Eklund

Ross:
Tom Byrnes

By the end of this month, there will be more than \$12,000 of remaining funds allocated for this contract, which have not been expended. Staff is recommending that the contract be extended and amended to include technical public outreach and education services related to the Transportation Sales Tax Expenditure Plan and ballot measure through the election on November 2nd.

San Anselmo:
Peter Breen

San Rafael:
Al Boro

Bonnie Nelson and her staff have been instrumental in developing the Expenditure Plan, preparing outreach materials, and presenting this information to the public. Recognizing that there is a high demand for information on the Expenditure Plan and ballot measure, staff would like to continue to work with Nelson/Nygaard on the necessary public outreach and education process leading up to the November 2nd election.

Sausalito:
Amy Belser

Tiburon:
Alice Fredericks

Recommendation

County of Marin:
Susan Adams
Hal Brown
Steve Kinsey
Cynthia Murray
Annette Rose

Staff recommends that TAM authorize the Chair to execute the Addendum to the Professional Services Agreement with Nelson/Nygaard Consulting Associates to extend public outreach and education services related to the Transportation Sales Tax Expenditure and ballot measure. This action requires an affirmative vote of at least nine Commissioners.

Respectfully Submitted,

Craig Tackabery
Executive Director

Attachment:

1. Proposed Addendum to the February 26, 2004 Nelson/Nygaard Contract
2. Nelson/Nygaard Contract, Approved on February 26, 2004

f:/CMA/Staff Reports/Nelson Nygaard Contract Addendum.doc

FIRST ADDENDUM TO AGREEMENT BY AND BETWEEN
THE TRANSPORTATION AUTHORITY OF MARIN
(FORMERLY THE MARIN COUNTY CONGESTION MANAGEMENT AGENCY)
AND NELSON/NYGAARD CONSULTING ASSOCIATES, DATED FEBRUARY 26, 2004

THIS FIRST ADDENDUM is made and entered into this 22nd day of July 2004, by and between the Transportation Authority of Marin, hereinafter referred to as "TAM," and Nelson/Nygaard Consulting Associates, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, TAM and the Contractor entered into an agreement for transportation planning services related to preparation of a transportation sales tax expenditure plan and ballot measure dated February 26, 2004 ("Agreement"); and

WHEREAS, the Agreement obligated Contractor to provide services set forth in "Exhibit A" attached to the Agreement; and

WHEREAS, Sections 6 and 14 to the Agreement obligated Contractor to complete the services by July 31, 2004; and

WHEREAS, the parties desire to amend the Agreement to increase the services to be provided and extend the time to complete the services.

NOW, THEREFORE, the parties agree to modify "Exhibit A" and Sections 6 and 14 of the Agreement as set forth below.

AGREEMENT:

1. "Exhibit A" is hereby amended to include the additional services:

Task 7 Public Outreach and Education

Nelson/Nygaard will assist TAM staff in preparing outreach and educational materials and conducting stakeholder outreach presentations related to the Transportation Sales Tax Expenditure Plan and ballot measure.

Deliverable:	Outreach and educational materials for presentations to stakeholders. Attendance at stakeholder presentations.
---------------------	---

2. Section 6 is hereby amended to read as follows:

All the work required by this Contract shall be completed and ready for acceptance no later than November 3, 2004.

3. Section 14 is hereby amended to read as follows:

This Agreement shall commence on February 26, 2004 and shall terminate on November 3, 2004.

4. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Addendum on the day first written above.

“TAM”

“CONTRACTOR”

TRANSPORTATION AUTHORITY MARIN

By: _____
Steve Kinsey, Chair

By: _____
Name: Nelson/Nygaard Consulting
Federal Tax I.D. #: 58-2592493
Telephone #: 415-284-1544

APPROVED AS TO FORM:
COUNSEL

By: _____

**MARIN COUNTY CONGESTION MANAGEMENT AGENCY
STANDARD SHORT FORM PERSONAL/PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT is made and entered into this February 26, 2004 by and between the Marin County Congestion Management Agency, hereinafter referred to as "CMA" and Nelson/Nygaard Consulting Associates, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, CMA desires to retain a person or firm to provide the following services:

Transportation Planning services related to preparation of a Transportation Sales Tax Expenditure Plan and Ballot Measure; and,

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by CMA, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

The CMA agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and contract forms and special provisions format when needed.

3. FEES:

The fees for furnishing services under this Contract shall be based on the rate schedule, which is attached hereto as **Exhibit "B"** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the contract.

4. MAXIMUM COST TO CMA:

In no event will the cost to CMA for the services to be provided herein exceed the maximum sum of \$60,784 including direct non-salary expenses.

5. PAYMENT:

The fees for services under this Contract shall be due as set forth in Exhibit "B" within thirty (30) calendar days after receipt by CMA of an invoice covering the service(s) rendered.

The source of funding by the CMA for this work shall be: 96F-CMA-2533.

6. CONTRACT PERFORMANCE TIME:

All the work required by this Contract shall be completed and ready for acceptance no later than July 31, 2004.

7. INSURANCE:

The Contractor shall maintain a commercial general liability insurance policy in the amount of One Million Dollars (\$1,000,000.00). Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of \$300,000.00. Said policies shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis unless CMA specifically consents to a "claims made" basis. The CMA shall be named as an additional insured on the commercial general liability policy. The insurer shall supply a certificate of insurance with endorsements signed by the insurer evidencing such insurance to CMA prior to commencement of work, and said certificate with endorsement shall provide for ten (10) day advance notice to CMA of any termination or reduction in coverage.

___By initialing in the space provided, Contractor warrants that the services to be provided under this Contract do not require the use of any type of vehicle by Contractor.

In addition, Contractor may be required to carry errors and omissions insurance or professional liability or malpractice insurance. If such insurance is required, it shall be set forth on **Exhibit "C"** attached hereto.

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify and hold the CMA harmless and defend the CMA against any and all claims, damages, losses and expense that may arise by reason of the Contractor's negligent actions or omissions. CMA agrees to timely notify Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this contract will constitute a material breach of the agreement. In addition to any other available remedies, CMA may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

8. WORKERS' COMPENSATION:

The Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Contract. If Contractor has employees, a copy of the certificates evidencing such insurance shall be provided to CMA prior to commencement of work.

___By initialing in the space provided, Contractor warrants that no employees will be used in providing the services under this Contract.

9. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

10. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the CMA except for any subcontract work identified herein.

11. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the CMA.

12. LICENSING AND PERMITS:

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits, which might be required by the work to be performed herein.

13. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this contract. Contractor will permit CMA to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at CMA's option. Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from CMA. Contractor shall refund any moneys erroneously charged. If CMA ascertains that it has been billed erroneously by Contractor for an amount equaling 5% or more of the original bid, Contractor shall be liable for the costs of the audit in addition to any other penalty to be imposed.

14. TIME OF AGREEMENT:

This Agreement shall commence on February 26, 2004 and shall terminate on July 31, 2004. Time is of the essence with respect to this Contract.

15. TITLE:

It is understood that any and all documents, information and reports concerning this project prepared by and/or submitted to the Contractor, shall be the property of the CMA. The Contractor may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatever, Contractor shall promptly turn over all information, writing and documents to CMA without exception or reservation.

16. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the CMA may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract.

17. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the CMA. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and worker's compensation.

18. AMENDMENT:

This Contract may be amended or modified only by written agreement of all parties.

19. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to CMA, as is evidenced in writing.

20. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

21. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold CMA harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees which it may incur as a consequence of this Contract and from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's willful misconduct or negligent performance of this Contract.

22. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all federal, state and local laws (including, but not limited to the County of Marin Nuclear Free Zone and Living Wage Ordinance) affecting the services covered by this Contract.

23. NOTICES:

This contract shall be managed and administered on CMA's behalf by the Department set forth below. All invoices shall be submitted and approved by this Department and all notices shall be given to CMA at the following location:

Craig Tackabery, Executive Director
Marin County Congestion Management Agency
P.O. Box 4186
San Rafael, CA 94913-4186

Notices shall be given to Contractor at the following address:

Bonnie Nelson
Nelson/Nygaard Consulting Associates
833 Market St., Suite 900
San Francisco, CA 94103

IN WITNESS WHEREOF, the parties hereunto have executed this Contract on the date first above written.

**MARIN COUNTY CONGESTION
MANAGEMENT AGENCY (CMA):**

By: _____
Steve Kinsey, Chair

**APPROVED AS TO FORM:
COUNTY COUNSEL**

CONTRACTOR:

By: _____

By: _____
Name: Nelson/Nygaard Consulting Associates
Federal Tax I.D.: #58-2592493
Telephone No.: (415) 284-1544

EXHIBIT "A"

SERVICES TO BE PROVIDED

BY CONTRACTOR

Task 1 Finalize Financial Estimates and Cash Flow Analysis

The current draft Expenditure Plan is based on revenue assumptions developed in 1992, using data from 1991 and before. Now, with two additional years of experience, it is time to reevaluate and finalize the revenue assumptions that go into the plan.

Revenue estimates developed at this time will have the advantage of a basic understanding of the capital and programmatic spending anticipated in the plan. With that information, we will be able to do initial cash flow projections that show the impact of bonding for capital projects against the overall cash flow from the tax. This is a crucial piece of missing information that could not have been calculated without an understanding of the program of projects to be included in the plan.

Estimates of cash flow are an iterative process that must be updated as the expenditure plan is better defined. This task is central to Marin County's ability to actually deliver on the promises of the sales tax in a timely manner.

Deliverable: Preliminary and final revenue estimates and cash flow analysis
--

Timeframe: Initial cash flow estimates to be completed in March. Final cash flow analysis will be completed when the plan is finalized in May 2004.

Task 2 Develop Stakeholder Outreach Materials and Complete Stakeholder Outreach Process Prior to Finalizing the Plan

Our current schedule calls for a release draft of the Expenditure Plan to be available at the end of February. Following the release, there will be an intense two-month period of outreach to key stakeholders, including the cities and towns and the very broad range of stakeholders who may be interested in the plan. Stakeholders are likely to include, but not be limited to:

- The League of Women Voters
- Marin Taxpayers Association
- Environmental Organizations
- The North Bay Council and Chambers of Commerce throughout the County, as well as other business organizations

- Paratransit Coordinating Council and other groups representing Seniors and persons with disabilities
- City Managers, Planning Directors, DPW Directors and other coordinated staff groups
- School Boards
- PTAs and other parent groups
- Transit Rider Associations
- Modal Advocates for all modes
- Neighboring Jurisdictions and other partners in providing transportation service

The purpose of this outreach will be to educate each of the stakeholders about the background work that went in to the Transportation Sales Tax Expenditure Plan, what is included in the plan, and how the plan will address issues that are specifically important to individual stakeholder groups. This task requires extensive coordination among the various individuals who will be involved in stakeholder outreach, including staff and other consultants.

For this task we anticipate creating several different versions of presentation materials that can be specifically targeted to the individual stakeholder. We also anticipate providing talking points and significant training for any speaker who may participate in the stakeholder meetings. In addition, Bonnie Nelson and her key staff will be available to speak at any or all of these critical meetings. Finally, we are prepared to assist with the complexities of scheduling and staffing during this busy time period.

The success of this task depends in large part on the relationship between the person doing the outreach and the group receiving the information. While an outreach consultant will be hired separately, it is imperative that the speaker be well informed and able to answer questions. The stakeholders in Marin County include very well informed and savvy groups that deserve to be treated intelligently and respectfully. Nelson\Nygaard has developed a very positive relationship with many of the stakeholder groups in Marin County. Our analysis is trusted and valued by people with a wide range of points of view. Our project manager recently addressed the Marin Environmental Leadership Forum and received very positive response from that group. We are currently preparing to make a presentation to the San Rafael Leadership Forum, which will focus on the business community.

This task is likely to include at least 25 meetings over a two-month period. The end product of these meetings is not the meetings themselves, but a comprehensive summary of comments with suggestions for how the plan might be refined to maximize support.

Deliverable:	Presentation material and speakers notes for presentations to stakeholders. Attendance at stakeholder presentations. Summary of comments and suggestions for refining plan.
---------------------	--

Timeframe: Initial materials to be completed before March 1. Initial round of meetings to occur in March and April. Summary of comments and suggestions for refining the plan to come to the April meeting of the Joint Committee.

Task 3 Coordination with Consultants and Staff

While polling and outreach consultants are being hired by separate procurements, it is imperative that the entire group of consultants and staff work closely as a team. Nelson\Nygaard is prepared to work with whoever is selected to assist with poll development and analysis, outreach presentations and materials, etc. This will include assistance with press management, development of materials, preparation of the speakers' bureau, and any and all tasks required for a successful result.

In addition to coordinating with other consultants, we will continue our work as an "extension of staff" in Marin County, coordinating with all staff members to ensure that we all remain "on message" and that we make the most of all resources. Bonnie Nelson, our project manager, will continue to be available to attend all internal meetings, including staff, Executive Committee meetings and an increasing number of Joint Committee/ Transportation Authority meetings.

Our goal is not to reinvent the wheel or to take over the scope of other consultants or staff, but to ensure that all aspects of plan development are undertaken seamlessly and with the most positive result.

Deliverable:	Ongoing coordination with polling and outreach teams and with staff and decision makers.
---------------------	---

Timeframe: Initial poll materials to be completed in March. All other activities ongoing.

Task 4 Finalize the Transportation Sales Tax Expenditure Plan

Following the first round of stakeholder outreach, the Release Draft of the Transportation Sales Tax Expenditure Plan will likely be “tweaked” to reflect comments and inputs received in Tasks 2 and 3. The final Transportation Sales Tax Expenditure Plan will include a detachable Executive Summary, which can receive wide distribution as well as a more detailed text that will serve as the blueprint for administering, collecting and distributing the transportation sales tax.

While much emphasis has been placed on the actual program of expenditures, there are other tasks required to finalize the plan, which also need to be completed in this timeframe. These include finalizing the process for overseeing and administering the sales tax, identifying the role and composition of the Citizens Watchdog Committee and any other advisory committees identified by the policy makers, and defining the role of public involvement in developing work plans for each of the program elements. Passing a sales tax depends both on the promised program of projects and the public’s trust that the program can be delivered. We will address both of these concerns in finalizing the plan.

Deliverable: Transportation Sales Tax Expenditure Plan
--

Timeframe: Transportation Sales Tax Expenditure Plan to be released in “final form” for final comments in May.

Task 5 Outreach to Cities and Towns for the Transportation Sales Tax Expenditure Plan Approval Process

Following the release of the Transportation Sales Tax Expenditure Plan, a minimum of 50+% of the Cities in Marin County, representing 50+% of the population must approve the plan. This task includes the second round of outreach to cities, with the goal of receiving their approval. During this time period, we will likely revisit other stakeholders to ensure that we “close the loop” and have prepared a product that can be enthusiastically embraced by the maximum number of groups and individuals in Marin County.

During this second round of visits to cities and other stakeholders, we will essentially repeat the activities described in Task 2. Tailored presentation materials will be prepared, along with a speaker’s bureau that can match the speaker with the individual city or other group for maximum effect.

The goal in this round is to minimize additional changes to the plan. If changes are required, the revised plan must be revisited by any City that voted prior to the change. This iterative process can be very cumbersome, but must be considered to maximize support.

The end product of this task is a final expenditure plan that has been approved for the ballot as required by statute.

Deliverable: Final Expenditure Plan Approved for the Ballot as Required by Statute
--

Timeframe: City and stakeholder presentations would take place in May through June with the final plan placed on the ballot by the end of July.

Task 6 Ballot Language – “75 Words”

The entire Sales Tax Expenditure Plan will be appended to the voters’ pamphlet for the November election (assuming a favorable vote of the cities is completed). However, few voters can be counted on to read the entire document. For many voters, the only thing they read is the 75-word ballot language, which must be carefully crafted to get the message across without leaving many lingering questions in the minds of voters.

Nelson\Nygaard will work closely with the outreach and polling consultants, as well as other staff members and decision makers, to develop ballot language that can explain the sales tax and provide a positive result.

Deliverable: Ballot language for the sales tax expenditure plan

Timeframe: Ballot language must be completed by early August when the plan is released to the Secretary of State.

EXHIBIT "B"
COMPENSATION OR FEES TO BE PAID
TO CONTRACTOR

Contractor will be compensated per the attached billing rates, with the total not to exceed \$60,784.00.